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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3385 OF 2014**

Shri Ashok Bandu Khandekar and Ors.	... Petitioners
Versus	
State of Maharashtra and Ors.	... Respondents

WITH

WRIT PETITION NO.2145 OF 2015

Hari Kalu Barkale (deceased)	
through Legal heirs and Ors.	... Petitioners
Versus	
State of Maharashtra and Ors.	... Respondents

WITH

WRIT PETITION NO.3809 OF 2015

Mohammad Pasha Abdulla Desai and Ors.	... Petitioners
Versus	
State of Maharashtra and Ors.	... Respondents

WITH

WRIT PETITION NO.6146 OF 2014

Shri Abdul Majid Hayachand Manoli and Ors.	... Petitioners
Versus	
State of Maharashtra and Ors.	... Respondents

Mr. Sanjeev Prataprao Kadam for the Petitioners.
Mr. V.S. Gokhale, AGP for the Respondent Nos.1 to 3.

**CORAM : A.S. OKA &
A.M. THIPSAY, JJ.**

DATE : 22nd JANUARY, 2016

ORAL JUDGMENT (Per A.S. Oka, J.)

1. These four matters are separated from the group.
2. Rule. In these four Petitions, the learned AGP waives service for the Respondents.
3. By these Writ Petitions under Article 226 of the Constitution of India, the Petitioners have challenged the acquisition proceedings of their lands which culminated into Award dated 21st January, 2004 made under Section 11 of the Land Acquisition Act, 1894 (for short “the said Act”).
4. Notification under Sub-Section (1) of Section 4 of the said Act was issued on 6th September, 2000. Declaration under Section 6 of the said Act was made on 14th December, 2001.
5. The main challenge to the acquisition proceedings is on the ground that in view of Sub-Section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “the said Act of 2013”), the acquisition proceedings stand lapsed as neither the possession of the acquired land has been taken over till the date of repeal of the said Act nor compensation has been paid within the meaning of Sub-Section (2) of Section 24.

6. In view of the specific assertions made in the Petitions regarding non-compliances in terms of Sub-Section (2) of Section 24 of the said Act of 2013, the State was directed to file specific affidavits dealing with the issue of taking over possession of the acquired lands as well as the issue of payment of compensation. In these four Petitions, there are separate affidavits filed by Dr. Swati Kiransinh Deshmukh-Patil, the Deputy Collector (Land Acquisition) No.12, Kolhapur. In these affidavits, the stand taken is that inspite of issuance of notice to the owners/ interested persons they did not come forward to collect the compensation and, therefore, the amount of compensation due to the Petitioners has been deposited in Government PLA Account.

7. The only submission of the learned AGP is that the PLA Account (Personal Ledger Account) is with the State Government Treasury and, therefore, the deposit of the compensation amount with the Treasury will have to be treated as sufficient compliance.

8. As far as interpretation of the term “paid” used in Sub-Section (2) of Section 24 of the said Act of 2013 is concerned, the law is well settled. In the case of *Pune Municipal Corporation and Another vs. Harkchand Misirimal Solanki*¹, the Apex Court specifically dealt with the said issue. The submission before the Apex Court was that the

1 2014 (3) SCC 183

word “paid” will have to be equated with the word “offered” or “tendered”. This argument is dealt with by the Apex Court in paragraphs 17 and 18 thereof which read thus :-

“17. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word “paid” to “offered” or “tendered”. But at the same time, we do not think that by use of the word “paid”, Parliament intended receipt of compensation by the landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression “paid” used in this sub-section (sub-section (2) of Section 24). If a literal construction were to be given, then it would amount to ignoring procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as “paid” if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31 (2) of the 1894 Act. In other words, the compensation may be said to have been “paid” within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the

amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33.

18. 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche in Nazir Ahmad[1]) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

(underlines supplied)

9. The issue was ultimately answered by the Apex Court in paragraph 20 which reads thus :-

“20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/ persons interested nor deposited in the court. The deposit of compensation amount in the government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners /persons interested. We have, therefore, no hesitation in holding that the subject

land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act.”

(underlines supplied)

10. The Apex Court held that compensation may be said to have been paid within the meaning of Section 24(2) of the said Act of 2013 when the land acquisition officer deposits the amount of compensation in the Court before which a reference under Section 18 of the said Act would lie. In the present case, compensation amount has not been deposited in the Court within the meaning of the said Act. There is no dispute that Awards under Section 11 subject matter of challenge were made five years or more prior to 1st January, 2014 when the said Act of 2013 came into force. Therefore, consequences provided in Section 24(2) will follow and the acquisition will stand lapsed. Accordingly, we pass the following order :-

ORDER

- (i) Rule is made absolute in terms of prayer clauses (b) and (c);
- (ii) We make it clear that the acquisition will stand lapsed only in relation to the lands subject matter of these Petitions and the acquisition in relation to the other lands subject matter of the impugned Awards will continue to be legal and valid;

- (iii) We also make it clear that this Judgment and Order will not preclude the State Government from initiating fresh acquisition proceedings in respect of the very lands subject matter of these Petitions in accordance with the provisions of the said Act of 2013. All contentions of the parties in this behalf are expressly kept open;
- (iv) There will be no order of costs.

(A.M. THIPSAY, J)

(A.S. OKA, J)